

PATTERNS OF POWER

An English Hierarchy in America

As if abiding and born within this our realm

1606 — 1908

A case study in the Patterns of Power series

Thomas J. Bryan with Claude (Anthropic)

Held as tested, not revealed

Contents

PART ONE	
THREE VENTURES	3
PART TWO	
THE TREATY	10
PART THREE	
WHAT THE VETO HAD BEEN HOLDING	15
PART FOUR	
THE SETTLEMENT UNMADE	19
PART FIVE	
THE FLOOR THAT WAS NEVER THERE	24
PART SIX	
WHAT THEY WANTED WAS THE MAN	29
PART SEVEN	
THE SAME ARMY	34
PART EIGHT	
EIGHTEEN SEVENTY-SEVEN	38
PART NINE	
THE WORDS LEFT STANDING	42
PART TEN	
THE ACCOUNTING	47

THREE VENTURES

The clause in the charter

On 10 April 1606 James I granted a patent to a joint-stock company, and buried in its provisions was a promise that would be quoted back at his great-great-grandson's ministers a hundred and sixty years later. All the King's subjects who should dwell in the intended colonies, and their children, shall have and enjoy all liberties, franchises and immunities *as if they had been abiding and borne within this our realme of England*.

Pause on the grammar, because the whole subsequent architecture runs through it. The clause does not create a new people. It denies that one is being created. A man who sails to the Chesapeake remains, by the express words of his sovereign, exactly what he was on the quay at Blackwall, and the liberties he carries are not colonial liberties but English ones, carried intact across three thousand miles of water like plate in a chest.

That the promise was honoured unevenly is a separate matter from the fact that it was believed, and it was believed with enough force to become the opening move of the imperial crisis. When Patrick Henry laid his resolutions before the Virginia House of Burgesses on 30 May 1765, his second resolve did not appeal to natural right, or to the rights of man, or to anything a Virginian might be said to possess by virtue of being a Virginian. It appealed to the charters: that by two royal charters granted by King James the First, the colonists were declared entitled to all liberties, privileges and immunities of denizens and natural subjects, to all intents and purposes, as if they had been abiding and born within the realm of England. The man is claiming a Londoner's rights on a Londoner's grounds. The grievance is not that England is oppressing another nation. It is that England is treating Englishmen as though they were not.

Hold that, because everything in what follows runs on it. The people later called Americans understood themselves, through the whole colonial period and well into the constitutional one, as Englishmen at a distance. It is why the rights vocabulary they inherited was English, why they expanded that vocabulary rather than replacing it, and why, when a settlement finally had to be written down among them, it took the form of a compact between parties who already shared a common law and therefore needed no common creed.

It also means the single word that covered all of them by 1787 was doing a particular kind of work. There was no one people there to be described. There were three going concerns, built by different men for different purposes over the better part of two centuries, each with its own way of holding land, its own labour system, its own account of why its arrangements

were rightful, and its own machinery for putting that account into its children.

Why anybody sailed at all

Before the three ventures, the question of who left, and why the men at the top of England did not.

England in the seventeenth century was a settled hierarchy with a rule of inheritance that concentrated estates in one heir and left every other son to find a position elsewhere. That rule solves one problem beautifully — an estate is not divided into uselessness across three generations — and manufactures another every time it operates. A landed family produces sons; one gets the land; the rest are gentlemen by formation and by expectation, trained to a station the family cannot seat them in. Multiply that across a class and across generations and a country accumulates a standing surplus of men with the manners and the appetites of the governing order and no place in it.

Such a surplus can go two ways. It can turn inward on the men already holding the positions, which is what the Wars of the Roses had been within living memory of the founding generation. Or it can be sent outward, and the second is enormously preferable to everyone with something to lose.

Which is why the colonisation of English America was not undertaken by the men at the apex. The King did not go. The House of Lords did not go. What went out were companies of adventurers, younger sons, dissenting congregations, indentured servants, planters from an older colony looking for more ground, and men with capital and no standing at home — the surplus and the discontented, financed by subscription and licensed by patent. The Crown's role was to issue the paper and take its share.

That single fact organises what follows. The English hierarchy did not extend itself to America. It exported the men it could not seat, and those men built hierarchies of their own on the other side of the water, using English law, English rights-language and English forms, but answering their own local circumstances. By 1770 there were not one but several colonial orders, each with an elite that had made itself, each holding property and offices its members had acquired rather than inherited, and each with a good working knowledge of the English constitutional vocabulary in which such acquisitions could be defended.

Virginia: a company before it was a country

The Virginia venture was a business proposition. The 1606 patent divided the enterprise between adventurers of London and adventurers of the west country, and the object stated in the King's preamble was the propagation of Christian religion to people living in darkness and miserable ignorance, together with such other purposes as might in time bring them to human civility. The purpose the subscribers had in mind was a return on capital, and for the first fifteen years there was none.

What made the colony pay was tobacco, and tobacco set everything that followed. It is a crop that exhausts land in a few seasons and rewards whoever can command the most acres and the most hands. So the colony's arrangements bent toward acquiring both. The headright system granted fifty acres to anyone paying a person's passage, which meant that the man who imported labour also accumulated land, and accumulated it in proportion to the labour he imported. Land and hands compounded together in the same pockets.

The first labour force was English and indentured — men and women bound for a term of years, with the great majority of arrivals in the seventeenth-century Chesapeake coming under such terms. They were servants, not property, and their servitude ended. What replaced that system, across the second half of the century, was a legal category that did not end, and the Virginia statutes recording the change are worth reading in sequence because they show a labour system being constructed one problem at a time.

In 1662 the assembly resolved a question about the status of children born to an enslaved woman and an English father by providing that all children born in the country should be held bond or free according to the condition of the mother. This is a deliberate inversion of the common-law rule that a child follows the father, and its effect is to make the condition heritable through the people the planters already held, so that the labour force reproduces itself without further purchase. In 1667 the assembly answered the objection that a Christian could not be held in perpetual bondage by enacting that baptism did not alter a person's condition of bondage — closing off a route out and, in the same motion, permitting masters to allow the conversion of the enslaved without financial risk. In 1669 it provided that a master who killed a slave under correction was not to be judged a felon, on the stated reasoning that no man would destroy his own estate. And in 1705 the whole was consolidated into a code that declared such servants to be real estate, descending to heirs as land descended.

Read the four together and what emerges is not an ideology arriving from outside but a property system being built by men solving practical difficulties, each solution generating the next question. The doctrine came later and was constructed to fit the arrangement, which is the ordinary order of events.

By the eighteenth century Virginia had a settled shape: a river-front gentry holding great estates and the county courts, a vestry, a militia, a House of Burgesses, and a large population held as property. Its elite governed through offices that looked English because they were

English — justice of the peace, sheriff, burgess, colonel of militia — and its self-understanding was that of a landed gentry running its own county. The men who would write in 1776 that all men are created equal held roughly two-fifths of Virginia's population as chattels, and this is not usefully described as hypocrisy. They were describing a settlement they were inside of, in the vocabulary they had inherited, and the vocabulary had a boundary drawn around the people who counted, drawn well before they were born.

Carolina: a colony of a colony

South Carolina was not settled from England. It was settled from Barbados, and it was an attempt to build a second Barbados on the mainland.

Barbados by the 1660s had become the most profitable and the most concentrated slave society in the English world: sugar, worked at scale, on an island entirely taken up, with an enslaved population that had passed the white one and a planter class with capital and nowhere left to expand. When the Lords Proprietors were granted Carolina in 1663 they recruited precisely there, and the men who came brought the whole apparatus with them — the labour system, the legal categories, the plantation discipline, and a set of expectations about the relation between a small holding class and a large held population that had been worked out on an island where the ratio was already extreme.

The colony's constitutional document was drafted in England with the assistance of John Locke, then secretary to the Earl of Shaftesbury, one of the Proprietors. The Fundamental Constitutions of Carolina of 1669 designed a hereditary nobility with landgraves and caciques, an order of leet-men bound to the soil, and — in the article that has occupied his readers ever since — a provision that every freeman of Carolina should have absolute power and authority over his negro slaves, of what opinion or religion soever. The same pen that argued property arises where a man mixes his labour with the world wrote the clause. The two are not reconciled here and need not be: what the coincidence establishes is that the intellectual equipment of English liberty and the legal equipment of English slavery were manufactured in the same workshop, by the same hands, in the same decade, for the same patron.

Carolina's demography then diverged from Virginia's in a way that shaped everything about its politics for two centuries. Rice, and later Sea Island cotton, were worked in a lowcountry where the enslaved population became an outright majority early and stayed one. A holding class permanently and heavily outnumbered on its own ground develops a characteristic politics: it is the most militant defender of the arrangement, the least willing to concede anything at its edges, and the most alert to any external authority that might interfere — because it has the least margin for error. Carolina's slave code of 1740, enacted after the Stono rebellion, is correspondingly the most elaborate in English America, and Carolina's

delegates in every subsequent national negotiation are the least willing to compromise. That is not a fact about character. It is a fact about a ratio.

New England: a covenant, and what a covenant builds

The northern settlements were founded on a different premise and produced a different machine.

The Massachusetts Bay venture was a company too, but its subscribers were a religious faction with a doctrine and a purpose, and it moved its charter across the water so that the government of the company became the government of the colony. What it built was a society organised around congregations: a covenanted membership, a settled ministry, a town meeting, and — decisive for everything that follows — a school. The Massachusetts law of 1647, remembered by the preamble's phrase about the old deluder Satan keeping men from the knowledge of the Scriptures, required every township of fifty households to appoint a teacher of reading and writing, and every township of a hundred to set up a grammar school to fit youths for the university. Harvard had been founded in 1636.

The reason for that machinery was theological — a covenant people must read the covenant — but its consequences were structural and enormous. It produced the most literate population in the English-speaking world, a body of men accustomed to arguing doctrine in public, a habit of settling common questions in a meeting of the town's freeholders, and a large class of educated men without land. And it produced them in a place whose thin soil and short season would not support plantation agriculture, so that the colony's capital went instead into fish, timber, shipping, distilling and the carrying trade.

That combination made New England a commercial society with a formidable capacity for organised argument. It also — and this belongs on the page at the same weight — made it a full participant in the Atlantic slave economy without being a slave society. Rhode Island's merchants carried enslaved Africans; Massachusetts distilleries turned Caribbean molasses into rum; northern shipping and northern insurance served the plantation trade; and northern textile mills, in the century that follows, would run on southern cotton. The northern interest was not outside the arrangement. It was inside it, at a different position, taking its return in freight and commission rather than in crop, which is precisely why it could later find its position changing without any change of heart being required.

Three builds, one legal vocabulary

By 1770, then: a Chesapeake gentry holding land and people and governing through county offices; a lowcountry planter class outnumbered on its own ground and militant in proportion; and a northern commercial society with towns, schools, meetings, ships and a doctrine of covenant. Three orders, built by different men for different purposes, each of which had reached the point where its arrangements looked to those inside them like the way things naturally are.

What they shared was not a nationality in any sense that would have meant much to them, and not a creed, and not an economy. What they shared was English law, the English rights vocabulary, and a common overlord across the ocean whose demands after 1763 fell on all three at once. That is a thinner basis for union than the founding story suggests, and its thinness explains almost everything about the document they eventually signed.

One more thing has to go on the page before that document, because the ground the whole southern arrangement stood on had been cleared by a conquest of its own, and the clearing was not finished when this study opens.

The ground beneath the cotton

The cotton belt that will be the subject of everything from Part Three onward was, within living memory of 1865, the territory of the Cherokee, Creek, Choctaw, Chickasaw and Seminole nations.

The Indian Removal Act was signed on 28 May 1830. The Cherokee, having adopted a written constitution, a syllabary, a newspaper and a supreme court, litigated — and in *Worcester v. Georgia* (1832) obtained from the Chief Justice of the United States a ruling that the Cherokee nation was a distinct community occupying its own territory in which the laws of Georgia could have no force. The removals proceeded regardless. The Treaty of New Echota of 1835, signed by a faction without authority from the national council, was used as the instrument; the Cherokee removal of 1838–39 followed under military escort, with mortality estimates that vary widely across sources and are contested to this day.

The land opened by those removals was surveyed, sold and planted in cotton, and it was worked by an enslaved population moved south and west in a domestic trade of enormous scale — a forced migration from the exhausted Chesapeake to the new ground that broke up families as a matter of routine business.

Two things follow and both matter for what comes later. First, the Southern order this study examines is not ancient. Much of its ground was in its possession for thirty years before Fort Sumter, and the men who held it in 1860 had fathers who remembered the taking. Second, the same federal government that will shortly be described laying a floor in the South on behalf of the freedpeople had, within the same generation, laid a floor across the same ground on behalf of the planters — and, as Part Seven will show, would be doing it again in

the West with the same regiments and several of the same officers while Reconstruction was still running.

An order stacked three deep, the youngest layer thirty years old: that is the country the compact of 1787 governed, and the compact is where we go next.



PART TWO

THE TREATY

What kind of document it is

The Constitution of 1787 is habitually read as a founding — a people constituting itself, in the words of its own preamble. Read instead as a compact among three going concerns that already existed and intended to go on existing, its architecture stops looking like philosophy and starts looking like drafting.

The parties were not individuals and were not, in any sense they would have recognised, one nation. They were established orders with divergent interests, each of which had recently thrown off a common overlord and had no intention of acquiring another. What each needed protection from was the other two. The southern states needed their labour system placed beyond the reach of a national majority they could already see they would eventually lack. The northern commercial states needed navigation and revenue powers that a southern bloc might otherwise veto. The Carolina and Georgia interest, whose demographic position was the most exposed of the three, needed the African trade kept open long enough to stock its ground.

Every one of those requirements is in the text, and in the form a treaty puts things: as terms.

The terms

Representation. Seats and electors were apportioned by counting free persons, excluding Indians not taxed, and adding three-fifths of all other persons. The clause converted held people into political weight for the men who held them. It is the most consequential single provision in the document for this study, and it will matter enormously at the far end, when emancipation deletes the fraction and the weight goes *up*.

The trade. Article I, section 9 provided that the migration or importation of such persons as any of the states then existing should think proper to admit should not be prohibited by the Congress prior to the year one thousand eight hundred and eight, though a duty not exceeding ten dollars each might be imposed. General Pinckney of South Carolina had moved to strike eighteen hundred and insert eighteen hundred and eight, and the motion carried seven states to four. Eight further years, bought on the floor of the convention, for the interest that most needed them.

Recovery. A fugitive clause obliged the return of persons held to service or labour escaping into other states, which extended one party's property law into jurisdictions that did not share it — a term of exactly the kind that treaties between sovereigns contain and that

constitutions of unitary peoples do not need.

The Senate. Equal representation of states in the upper chamber, regardless of population, is the standard device by which a smaller party to a compact protects itself against a larger one, and it was understood as such at the time.

And the lock. The amendment article expressly protected the importation clause from amendment before 1808. The parties did not merely agree terms; on the point one of them cared most about, they wrote the terms beyond the reach of the procedure for changing terms.

The word that is not in it

The document nowhere uses the word slavery. It says *such Persons, other Persons, Person held to Service or Labour*. A reader who did not already know the country would not learn from the text what was being protected.

Two consequences pull in opposite directions, which is why the drafting has been argued over ever since. The circumlocution allowed men who found the institution indefensible to put their names to the paper. It also left the protection perfectly effective, because a clause need not name a thing in order to secure it.

And a fiction that stays on the page long enough will eventually be interpreted by someone the drafters did not choose. In 1857 Chief Justice Taney read the importation clause together with the fugitive clause and concluded that they showed conclusively that such persons and their descendants had never been embraced within the word *citizen* as the framers used it. The drafting turned back on the drafters' descendants, through a court, which is the ordinary fate of a legal fiction left standing.

Why the parties signed

A treaty is signed when each party judges that the arrangement pays it more than the alternative, and in 1787 each did.

The northern commercial interest got a national government with power over commerce and revenue, a navy to protect its shipping, and a continental market. The Virginia interest got a national frame in which its own men — who had the largest state, the most prestige and the deepest bench of political talent — would be very well placed to lead, and which is precisely what happened for the following forty years. The Carolina interest got twenty years of the trade, the fugitive clause, and the three-fifths weight.

Nobody was being generous, and nobody was being duped. Each party was in a position from which the compact was the best available deal, and each signed for that reason. What matters for everything that follows is that the positions, not the sentiments, are what did the

signing — because positions change, and sentiments would have had to be argued out of.

What the arrangement then did, without anyone organising it

For seventy years the compact held in the way durable arrangements hold, which is that nobody had to meet to defend it.

A Massachusetts shipowner, a Virginia planter, a Charleston factor and an upcountry yeoman with no slaves at all each occupied a position whose value depended on the arrangement continuing, and each in defending his own position defended the whole without consulting anyone. The shipowner wanted the carrying trade and the tariff; the planter wanted his title and his seats; the factor wanted the crop moving and the credit flowing; the yeoman wanted the land title the government guaranteed him and the standing the arrangement's racial floor gave him regardless of his poverty. Men who disliked one another intensely, and said so at length in print, coordinated perfectly by not coordinating.

This is worth stating carefully because it is the thing most often mistaken for conspiracy. There was no committee. There did not need to be one. An arrangement that gives everyone with power a stake in it is defended by every one of them acting purely for himself, and the appearance of coordination is a by-product of aligned self-interest rather than evidence of a plan.

The corollary is what ends such arrangements, and it is not that somebody finally sees through them. It is that one party's position changes so that defending the arrangement stops paying him. That is the subject of the next part, and it can be dated to a single Tuesday.

The balance, and how it was kept

Before the Tuesday, the mechanism by which the terms were maintained for seventy years, because it explains what everyone understood to be at stake.

The three-fifths clause and the equal Senate together gave the southern interest a standing weight in the national government larger than its free population warranted. That weight was preserved by keeping the number of slave and free states in rough parity, which is why every territorial question from 1820 onward was fought as though the survival of the arrangement depended on it — because it did. Missouri in 1820, Texas in 1845, the Mexican cession in 1850, Kansas and Nebraska in 1854: each was a fight over whether new ground would be added to one column or the other, and each was settled by a formula intended to hold the balance a little longer.

What the southern bloc used its weight for is documented and is essential to Part Three, because it establishes what the arrangement was restraining. A transcontinental railroad had been surveyed on five routes by a War Department under Secretary Jefferson Davis in the 1850s, and no bill could be agreed, because the route determined which section's cities would

command the western trade. Homestead bills — free land in the West to actual settlers — were pressed for thirty years and blocked, because free farms meant free-soil settlers and free-soil settlers meant free states. A national banking system, a protective tariff, federal support for agricultural and mechanical colleges: each was wanted by the northern interest and each was unobtainable while the southern bloc could stop it.

Hold that list. Its subsequent fate, within eighteen months of secession, is the clearest evidence in American legislative history of what the compact of 1787 had actually been doing.

The arithmetic fails

By 1860 the free-state population, and the electoral weight that followed it, had grown to the point where a coalition confined entirely to the North could take the presidency outright.

In November of that year it did. Lincoln took 39.7 per cent of the popular vote and 180 electoral votes, carrying eighteen states, every one of them free. He carried no slave state. The Republicans distributed no tickets in ten southern states — under the party-ticket system of the day this was less an exclusion imposed on them than a calculation they had made, since printing and shipping ballots into Alabama or Mississippi would have been money spent on votes that were not coming. And, decisively, the party did not need them: the sixty-one electoral votes of those ten states were about a fifth of the 303 in play, and the arithmetic worked without any of them. In the five slave states where his name did appear, all in the upper South, he took around four per cent; in Virginia, about one.

That is the moment the arrangement fails, and it fails from the top rather than the bottom. Nothing about any individual's condition had altered on 7 November 1860. No enslaved person was freer, no yeoman richer, no planter poorer. What had altered was that a national administration could now be constituted without a single southern elector's consent, and would be, every four years, for as long as the population trend held.

A veto that one faction had held since 1787, and had built its entire position around holding, had stopped existing. A man whose position no longer depends on an arrangement stops defending it — and eleven states acted on that within five months.

What they said they were leaving over

The seceding states published their reasons, which spares anyone the trouble of inferring them.

Mississippi's declaration of January 1861 opened by stating that its position was thoroughly identified with the institution of slavery, the greatest material interest of the world. South Carolina's, of 24 December 1860, is a lawyer's brief and is the more revealing document, because its central complaint is a treaty complaint: that the non-slaveholding

states had failed to perform their obligations under the compact — specifically the fugitive clause — and that a failure of performance by one party released the others. The document reads the Constitution exactly as this part has read it, as an agreement among sovereigns with terms, and argues that the terms had been broken.

Georgia's declaration went further and put the arithmetic on the page: it recited the history of the anti-slavery party's growth, its capture of the northern states, and its capture at last of the presidency, and concluded that the party which had done so was in possession of the government.

They understood their own situation precisely. They had lost a veto, and the veto had been the thing they held.



PART THREE

WHAT THE VETO HAD BEEN HOLDING

The legislative flood

The clearest evidence of what an arrangement was for is what happens the moment one party to it stops being able to say no.

The southern members withdrew from Congress across the winter and spring of 1860–61. The measures their bloc had blocked for thirty years then cleared both houses within eighteen months, several of them in a single session, and the sequence is worth setting out because there is no other way to see so plainly what the compact had been restraining.

The Morrill Tariff was signed on 2 March 1861 — two days before Lincoln took office, passed by a Senate that southern departures had already reshaped — reversing two decades of falling duties in favour of the northern manufacturing interest.

The Homestead Act was signed on 20 May 1862: 160 acres of surveyed public land to any citizen or intending citizen who would file, live on it five years and improve it. Free-land bills had been pressed since the 1840s and blocked because free farms meant free-soil settlers and free-soil settlers meant free states.

The Pacific Railway Act was signed on 1 July 1862, chartering the Union Pacific and the Central Pacific with land grants and bond subsidies, on a central route. The five surveys of the 1850s had produced no bill in a decade because the route determined which section's cities would command the western trade. With the southern route's advocates gone from the chamber, the question resolved in an afternoon.

The Morrill Land-Grant College Act was signed on 2 July 1862, endowing agricultural and mechanical colleges with proceeds from public land — a version had been passed in 1859 and vetoed by a Democratic president on constitutional grounds.

The Legal Tender Act of February 1862 created a national paper currency; the National Banking Acts of 1863 and 1864 created a national banking system and taxed state banknotes out of existence. Both had been unobtainable for a generation.

Set the list beside the seven decades preceding it. A programme that a section had wanted since the 1830s and had never been able to enact passed almost in its entirety in the first two years of the war, and it passed because the men who had been stopping it were no longer in the room.

Two things must be said about this at once, in the same breath, because taking either without the other produces a false picture.

The first is that this was not why the war was fought. The North did not provoke secession to get a railroad. The sequence ran the other way: the southern bloc left, and its departure opened a legislative field that the northern interest then occupied with entire consistency and considerable speed.

The second is that it tells you exactly what the arrangement of 1787 had been for. A compact is defined by what it prevents. For seventy years this one had prevented a national developmental programme that a majority of the country's free population wanted, and it had prevented it through a veto weighted by counting held people at three-fifths. The moment the veto lapsed, the programme appeared. Nobody had to change their mind about anything.

The floor, and what it was raised to do

The war itself has to be described briefly and precisely, because the whole subsequent settlement rests on who held organised force and what they held it for.

Fort Sumter was fired on in April 1861 and Lincoln called for seventy-five thousand militia to suppress what the proclamation called combinations too powerful to be suppressed by the ordinary course of judicial proceedings. That is the language of a state putting down an insurrection, and it is what the war was for at the outset — not emancipation, which the administration disclaimed repeatedly, but the restoration of the arrangement.

The Emancipation Proclamation of 1 January 1863 changed the object, and its own text is candid about the grounds. It proclaims the freeing of the enslaved in the states then in rebellion as *a fit and necessary war measure for suppressing said rebellion*, issued *by virtue of the power in me vested as Commander-in-Chief of the Army and Navy of the United States in time of actual armed rebellion*. It exempted the loyal slave states and the occupied areas of Louisiana and Virginia by name.

Read as an instrument rather than as a monument, it is a military order with a stated military rationale, whose reach was defined by the extent of the war power and whose exclusions were defined by where that power did not run. That does not make it less consequential. It makes it legible: the document that ended American slavery in the seceding states was drafted as an act of war, and its authority came from the war and not from any general power over the institution — which is why a constitutional amendment was afterwards necessary, and why the amendment did not come until December 1865.

The proclamation also announced something else, in a clause less often quoted: that such persons of suitable condition would be received into the armed service of the United States. That produced the fact that follows.

Who was actually in the field

By the war's end there were 175 regiments of United States Colored Troops, with something on the order of 178,000 to 180,000 men enlisted — about a tenth of the army's manpower on the standard assessment.

They were raised from a population that the same government's conscription law would not enrol. The Enrollment Act of 3 March 1863 required the registration of every male citizen and every immigrant who had declared his intention to become one, between twenty and forty-five. Free Black men were not required to enrol, because they were not held to be citizens.

State the arithmetic plainly. A tenth of the force that laid this floor was drawn from people who could not be conscripted into it, because they were not members of the polity it was defending, and who were being freed by a document that classified them as a military necessity.

The rest of the force was raised by a system that priced exemption. Under the Enrollment Act a drafted man could avoid that round by furnishing a substitute or paying a three-hundred-dollar commutation fee — a sum beyond the reach of most working men, and the origin of the complaint about a rich man's war and a poor man's fight. The Confederacy had gone first and gone further: conscription from April 1862 for white men between eighteen and thirty-five, extended twice until it ran from seventeen to fifty; substitution permitted until abolished at the end of 1863; and the exemption act of 11 October 1862, immediately known as the Twenty Negro Law, exempting one white man for every twenty enslaved people held on a plantation.

That last statute deserves a sentence of its own. Its stated purpose was to keep enough white men at home to prevent revolt, and its timing — three weeks after the preliminary emancipation proclamation — says what its drafters expected that document to do behind their lines. It was narrowed the following May, with an affidavit and a five-hundred-dollar payment required, after it had already done its damage to the morale of men who owned nobody.

Both floors, then, were manned by systems that let the men with the most property in the arrangement buy their way out of defending it, and both provoked the same complaint from the men who could not.

The Confederate order, briefly

The seceding states built a state, and it is worth noting what kind, because it was not the one their doctrine advertised.

A confederation founded on the sovereignty of its member states conscripted their citizens, impressed their property, suspended habeas corpus in places, ran a national tax in kind on agricultural produce, and by the end was debating and, in the last weeks, enacting the

enlistment of enslaved men as soldiers. Governors of Georgia and North Carolina objected loudly to the centralisation throughout, and the objection was correct: a state at war centralises regardless of what it says about states, because organised violence at scale has requirements that doctrine does not override.

This is not offered as hypocrisy. It is offered as the ordinary behaviour of a floor under pressure, and it will matter in Part Five, because the elite that emerges from the surrender in April 1865 has just spent four years running a wartime state and knows exactly how to organise.

What the surrender did and did not settle

Lee surrendered the Army of Northern Virginia at Appomattox on 9 April 1865 and the remaining Confederate forces followed over the following weeks. The Thirteenth Amendment was ratified on 6 December 1865.

What that sequence established was that the seceding states could not leave and that slavery as a legal status was ended. What it did not establish — and this is the hinge of everything remaining — was who would hold the ground, who would work it, on what terms, and who would govern the states in which the work was done.

Those questions were open on the day of the surrender, and the parties to them were not two but at least four: the victorious northern interest, now holding both the army and the whole legislative field; the defeated planter class, stripped of its property in persons but not of its land, its county offices, its social authority or, as it turned out, its weapons; the four million freedpeople, who had just supplied a tenth of the winning army and who had a precise and consistent idea of what they wanted; and the southern white yeomanry, whose position had never been the planters' and whose war had gone badly for them in particular.

Everything from here on is those four parties settling what the surrender left open. The next part is about the twenty months in which the victorious power chose which of them to settle with.



PART FOUR

THE SETTLEMENT UNMADE

What the conquered asked for

The freedpeople's own proposal survives, and it was made before any settlement was written, which is rare enough to be worth dwelling on.

On 12 January 1865, in Savannah, Secretary of War Stanton and General Sherman met twenty black ministers and lay leaders. Asked what they wanted, their spokesman Garrison Frazier answered that the way they could best take care of themselves was to have land, and turn it and till it by their own labour. He added that the young men would serve the government in fighting the rebels, and that the women, children and old men would work the land. Almost all present agreed in asking for grants for autonomous black communities rather than settlement among white southerners, on the ground that racial hatred would prevent their advancement in mixed areas.

Four days later Sherman issued Special Field Orders No. 15. Its first article reserved the islands from Charleston south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering the St Johns River in Florida, for the settlement of the negroes then made free by the acts of war and the proclamation of the President. Its third article set the mechanism: where three respectable heads of families desired to settle, an inspector would license them, and the parties would subdivide so that each family should have a plot of not more than forty acres of tillable ground, with not more than eight hundred feet of water frontage where it bordered a channel, in the possession of which land the military authorities would afford them protection.

About four hundred thousand acres were involved. By June 1865 some forty thousand people were living on it.

Say plainly what the order was and was not. It was a wartime military measure that resettled refugees the army did not wish to go on feeding, punished rebels, and provided for freedpeople, all at once, and Sherman's motives did not include a belief in racial equality. But it is the only place in this study where the conquered's own stated settlement and the conqueror's instrument coincide, and the coincidence lasted about ten months.

The reversal, as a sequence of decisions

The undoing is fully documented and is best laid out as dated instruments, because each was a decision by a named man who could have decided otherwise.

Johnson's amnesty proclamation of 29 May 1865 restored property rights to most former Confederates on oath, with excepted classes — including anyone worth more than twenty

thousand dollars — required to apply for individual pardon. He then issued those pardons in bulk. By that autumn they were being granted in hundreds a day; some thirteen thousand in all. Pardoned owners were encouraged to petition for the restoration of property, including land occupied by freedpeople under Sherman's order.

General Oliver Otis Howard, Commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, resisted. On 28 July 1865 he issued Circular No. 13, directing his agents to set aside forty-acre tracts and instructing them that the pardon of the President would not be understood to extend to the surrender of abandoned or confiscated property which by law had been set apart for refugees and freedmen. General Rufus Saxton wrote to him from the Sea Islands on 5 September that the old owners of the lands were making strong efforts to regain possession of them.

Under pressure from the White House, Howard rescinded his own circular and replaced it with Circular No. 15, directing agents to restore land to pardoned owners, with a narrow exception for parcels already sold or under cultivation, which were not to be disturbed until crops were harvested or compensation paid.

On 19 October he went to Edisto Island in person to tell the settlers, having first conferred in Charleston with the ex-Confederates who wanted the ground back. His brother recorded that he dreaded the errand like death. The settlers' committee wrote back to him, and their letter is the clearest statement in this study of what a settlement looks like from underneath: *Here is where secession was born and Nurtured Here is were we have toiled nearly all Our lives as slaves and were treated like dumb Driven cattle, This is our home, we have made These lands what they are.*

Remember Howard. He will appear again in Part Seven, twelve years later and three thousand miles away, doing the same errand to different people.

The scale, stated honestly

The land question is almost always overstated in both directions and the arithmetic corrects both.

At its peak in 1865 the Freedmen's Bureau controlled between eight hundred thousand and nine hundred thousand acres of plantation land — approximately two-tenths of one per cent of the land in the South. Even had every acre been distributed and held, it would have settled a small fraction of four million people. The land settlement was not defeated in 1865; there was never enough of it in the Bureau's hands to have been a settlement at all. What was defeated was the possibility of a larger one, and Thaddeus Stevens's bill for general distribution failed in 1867.

There was, however, one instrument that operated at a scale that could have mattered, and its fate is the sharpest available test of what the victorious power actually wanted.

The Southern Homestead Act, signed 21 June 1866, opened about 46.4 million acres of federal public land in Alabama, Arkansas, Florida, Louisiana and Mississippi, restricted until 1 January 1867 to freedmen and loyal whites. That is a hundred times the Bureau's holdings and roughly fifty times the Sherman reserve. Much of the acreage was remote, swampy or forested, poorly suited to subsistence farming by applicants without capital, and valuable chiefly for timber. It was repealed in 1876, with timber and lumber interests among those pressing for repeal.

Set that beside the Homestead Act of 1862, which put 160-acre farms into the hands of white settlers in the West at a rate that would eventually dispose of some ten per cent of the land area of the United States. The same government, in the same decade, ran a generous land settlement for one population and a token one for another. That is not a failure of administration. It is a statement of what the ground was for and who was meant to have it.

The settlement that was actually being drafted

While the land question was being closed, the settlement that would govern the next generation was being written in state capitols, and it was not about land at all.

Mississippi's legislature met at Jackson from October to December 1865, under the constitution Johnson had accepted, in a state where black people were fifty-five per cent of the population. Its session laws list an act to confer civil rights on freedmen, an act to regulate the relation of master and apprentice, and an act to amend the vagrant laws.

The naming is the first thing to notice. The instrument is titled a conferral of rights, and its opening section does confer some: freedmen, free negroes and mulattoes may sue and be sued, implead and be impleaded, in all the courts of law and equity of the state, and may acquire personal property. Then come the operative clauses.

Every black person in the state was required, by the second Monday of January each year, to have written evidence of employment — a labour contract, or a licence to do irregular and job work, issued in towns by the mayor and in the countryside by a member of the county board of police, and revocable for cause at any time by the authority that granted it. The amended vagrancy act of 24 November 1865 defined as vagrants all black people over eighteen found on the second Monday in January 1866, or thereafter, with no lawful employment or business, or found unlawfully assembling themselves together either in the day or night time. Black offenders faced fines up to fifty dollars and ten days; white offenders up to two hundred dollars and six months — the heavier penalty falling on white persons who associated with black people on terms of equality.

The act of 25 November authorised the arrest and return of any black labourer who left an employer's service before his contract expired. And its ninth section reached the third party: if any person should persuade or attempt to persuade, entice, or cause any freedman,

free negro or mulatto to desert from the legal employment of any person before the expiration of his term of service, that person should be guilty of a misdemeanour.

The apprenticeship act completed the machine. It made it the duty of all sheriffs, justices of the peace and other civil officers to report to the probate courts twice yearly all freedmen under eighteen who were orphans, or whose parents had not the means or refused to provide for them; the court then apprenticed them, with former owners given preference. Enticing an apprentice away, employing one, or feeding or clothing one without his master's written consent was punishable as enticement was punishable.

The clause that confesses

Read the enticement provisions on their own and the whole settlement becomes legible.

A law that criminalises persuading a man to leave his employer for a better offer is not a law against idleness. It is a law against the labour market — specifically against competitive bidding by other planters — and it exists because the labour was scarce, wanted, and would otherwise have been bid up. Legislatures do not criminalise competition for a worthless thing.

That single observation organises the rest of this study, and it is worth stating as plainly as it can be stated, because almost everything about the American South after 1865 follows from it and from its opposite.

What the southern order wanted was the man. Not the ground: it already held the ground, and there was more ground than it could work. What it had lost in 1865 was not land but the legal instrument by which four million people had been held to labour on it, and every statute passed in the twenty months following the surrender was an attempt to reconstruct that instrument out of other materials — vagrancy, contract, apprenticeship, enticement. A conqueror who wants a population's ground makes it move. A conqueror who wants its labour makes it stay, and criminalises anyone who offers it a better price. The South did the second, comprehensively, in writing, within eighteen months of losing a war fought over the first version of the same arrangement.

Hold that beside what the same federal government was doing in the West in the same years, and the comparison will do more work than any amount of argument. Part Seven takes it up.

The mistake the victors made

One further thing about these twenty months, and it explains the violence of the decade that follows.

The victorious power restored a defeated elite to its property, its standing, its county offices and its political rights, in exchange for an oath — and demanded no service in return, and removed no capacity. Confederate armies were paroled rather than interned. Officers went home. Weapons were not systematically collected. The command relationships of four years of war remained intact in every county, among men who knew each other, had served together, and had just spent four years learning how to organise violence at scale.

This is a very old kind of mistake and it has a very predictable result. An arrangement that hands a beaten rival his estate back while leaving him the means of organised force has not created a dependant; it has created a rival with a base. The first organised night-riding appeared within fourteen months of the surrender, and the reconquest of the southern state governments was substantially complete within twelve years.

The federal government would spend the next six years discovering this, and Part Five is what it did about it.



PART FIVE

THE FLOOR THAT WAS NEVER THERE

The demobilisation

The story both sides later told about Reconstruction requires a South held down by federal bayonets. The numbers do not support it, and they are not marginal numbers.

In May 1865 the Union army numbered approximately one million men. What followed was not an occupation but one of the fastest demobilisations any state has carried out. By the end of 1865 roughly 152,000 remained in the South. By January 1866 the figure was 87,550 on the Army's own retrospective count, or 61,800 in the ten Confederate states excluding Texas by another reckoning — the two differ on what they count, and the range is the honest statement. By October 1867, with the Military Reconstruction Acts newly in force and the South divided into five districts, there were 20,117 soldiers in the entire region.

President Johnson told Congress in his annual message of 9 December 1868 that the strength of the military force on 30 September last had been 48,000 men, and that by the first of January next the number would be decreased to 43,000. That is the whole national army — frontier posts, coastal forts, the Mexican and Canadian borders and the eleven former Confederate states together — at roughly five per cent of its size three and a half years earlier.

The state figures are sharper than the aggregates. South Carolina held 10,307 United States troops in July 1865 and 1,992 by June 1866. Georgia was down to 593 soldiers by June 1866 — the month the Ku Klux Klan was founded at Pulaski, Tennessee. Five hundred and ninety-three men, for a state of a million people, at the moment the counter-organisation began.

Two conclusions follow, and they cut against opposite parties, which is why the figures belong on the page rather than in a summary.

The first is that the account of a South groaning under military occupation is not a distortion of the record but an inversion of it. The occupation was never remotely large enough to do what that story says it did.

The second is harder for the other side. The federal government did not withdraw its floor from the South in 1877. It withdrew the overwhelming bulk of it in 1865 and 1866 — before a single Reconstruction Act had passed, before the Fourteenth Amendment was ratified, and before the enforcement statutes existed. Everything Congress legislated from 1866 onward was written to be executed by a force that had already gone home.

And Johnson's stated reason was fiscal and public. In the same message he set out that sixteen thousand three hundred men had cost the nation \$16,472,000 in 1860, that \$65,682,000 was estimated for the army for the year ending 30 June 1870, and that he hoped Congress would sanction a reduction.

The floor was priced out before it was argued about. Everything that follows is a legislative and constitutional programme of great ambition being written on top of an absence.

What Congress wrote anyway

The programme itself was serious and, on paper, transformative.

The Civil Rights Act of 1866 declared all persons born in the United States and not subject to any foreign power to be citizens, with the same right in every state to make and enforce contracts, to sue, to give evidence, and to inherit, purchase, lease, sell, hold and convey real and personal property, as enjoyed by white citizens. It was passed over Johnson's veto.

The Fourteenth Amendment, proposed in June 1866 and ratified 9 July 1868, put citizenship into the Constitution and added the due process and equal protection clauses. Its second section — which will be the subject of Part Nine and is the hinge of the whole study — dealt with representation.

The Military Reconstruction Act of 2 March 1867 divided the ten unreconstructed states into five military districts and set the terms of readmission: new constitutions framed by conventions elected by male citizens of whatever race, and ratification of the Fourteenth Amendment.

The Fifteenth Amendment, ratified 3 February 1870, provided that the right of citizens to vote should not be denied or abridged by the United States or by any state on account of race, colour or previous condition of servitude.

And on that basis, briefly, an extraordinary thing happened. Black men registered and voted in large numbers across the South. They sat in the constitutional conventions of 1867–68 and wrote provisions — for public schools, for the abolition of property qualifications, for the reform of penal codes — that in several states outlasted everything else about Reconstruction. Something over fifteen hundred Black men held public office in the South during the period, from justices of the peace and county commissioners to sheriffs, legislators, lieutenant governors, sixteen congressmen and two United States senators, both from Mississippi. The state constitutions of 1868 established the South's first systems of public education for either race.

That record is not a footnote and should not be handled as one. It is the strongest evidence available anywhere in this study of what the arrangement had been suppressing,

because it shows what appeared the moment the suppression was lifted even slightly and even briefly.

The counter-organisation

Against a garrison of a few hundred men per state, the defeated elite organised.

The Klan was founded at Pulaski in 1866 and spread through the former Confederacy across 1867–70, alongside a set of parallel bodies — the Knights of the White Camelia, the White Brotherhood, later the White League and the Red Shirts — that differed in name, in degree of secrecy and in tactics but not in function. Their targets were consistent and they were political: Republican officeholders, Black voters, teachers in freedmen's schools, men who had bought land, men who had testified, and men who had simply done well.

The scale is contested in detail and unambiguous in kind. Louisiana in the run-up to the 1868 election is estimated to have seen well over a thousand political killings. The Colfax courthouse in Grant Parish, Louisiana, was attacked on Easter Sunday 1873 and the Black defenders killed after surrender, with tolls given across a wide range in different sources and none of them small. Coushatta, Vicksburg, Hamburg, Wilmington: the list runs to the end of the century.

And what this was, structurally, needs saying without euphemism. It was not disorder. It was an armed political campaign conducted by an organised counter-elite against a government it intended to displace, and it succeeded. The men doing it said so at the time, in their own newspapers and their own convention speeches, and the historiography that later described the period as a time of southern suffering under misgovernment was written by the winners of that campaign and their descendants.

The one time the seam worked

On 21 March 1871 the Forty-second Congress resolved to appoint a joint committee to inquire into the condition of affairs in the late insurrectionary states. Seven senators and nine representatives sat. They held hearings in Washington and travelled into the states, taking testimony over seven months.

The result was published in 1872 by the Government Printing Office in thirteen volumes, as part of the Congressional Serial Set — a publication established in 1817 for the express purpose of making the government's records available to the public. The report proper occupies the first volume; the other twelve are testimony and documents. Some eight thousand pages of evidence, most of it sworn, a great deal of it given by Black witnesses describing in detail what had been done to them.

Essie Harris testified in Washington on 1 July 1871 about the second visit the Klan paid to his house. They were there, he reckoned, an hour and a half. They said they had killed him. He felt it to be life and death anyhow. He thought his wife and children were dead and did not expect anything else. *The shot just rained like rain.* They said they were going to set his house on fire, and that they did not intend to leave until they had done it.

Two things must be said about that archive, and they pull against each other, which is why both belong here.

The first is that this was not a state concealing. It was a state investigating itself with unusual thoroughness and then printing the result for sale. Over seven months in 1871, the Congress of the United States listened to Black witnesses and published what they said. There is very little like it anywhere in the record of any nineteenth-century state.

The second is that it worked. The hearings, together with the Enforcement Acts of 1870 and 1871 — the third of which authorised the President to suspend habeas corpus in disturbed districts — persuaded Grant to move. In October 1871 he suspended the writ in nine South Carolina counties; federal marshals and troops made mass arrests; hundreds were indicted and a smaller number convicted, and many more fled. The Klan as then constituted was effectively destroyed.

Publicity, in 1871 and 1872, produced enforcement. That is worth recording as the exception it is.

And the same facts, later, producing nothing

Then the identical evidence kept arriving, through the identical channel, for thirty more years, and produced nothing.

Ida B. Wells published *Southern Horrors* in 1892 and *A Red Record* in 1895, the latter a statistical compilation drawn substantially from the *Chicago Tribune's* own annual tallies — that is, from a white newspaper's figures, chosen precisely so that the numbers could not be dismissed as hers. Her press in Memphis had been destroyed and she had been driven from the city for printing an editorial suggesting that the rape charge was frequently a pretext. She took the evidence to Britain, to lecture audiences, and back again. Congress did not act. No federal anti-lynching law was ever passed in her lifetime, or for the century after.

Set 1871 against 1892 and the variable is isolated more cleanly than a comparison across different grievances could isolate it. Same channel, same kind of evidence, same government, opposite outcomes. What changed was not the information. What changed was where the cost of acting would land.

In 1871 the correction cost the northern electorate almost nothing and paid it something: the Klan was killing Republican voters and officeholders in states whose electoral votes the party needed, enforcement required prosecutions and a modest deployment, and the men

who bore the cost were southern Democrats, whom the governing coalition had no reason to protect.

By the 1890s every term had reversed. The garrison had been demobilised for fiscal reasons a generation earlier, and re-raising it would fall on the metropole's own taxpayers. The party no longer needed those electoral votes on the same terms. The Supreme Court had narrowed the enforcement statutes, so the legal route now required fresh legislation as well as troops. And the national story about the war had changed, so that a correction would now have to be argued against an account most northern readers believed.

Nobody suppressed Ida B. Wells. She was received, reviewed, argued with, and filed. The exposure was not blocked; it simply stopped connecting to conduct, because by then the correction could no longer be charged to somebody else.

That is the mechanism by which a floor is withdrawn without anyone announcing a withdrawal, and Part Eight is where it completes. But the settlement that the withdrawal left standing was already being built underneath, and it is the subject of the next part.



PART SIX

WHAT THEY WANTED WAS THE MAN

The compromise nobody chose

The labour arrangement that governed the cotton South for eighty years was not designed by anybody. It emerged from a standoff between two parties who each wanted something the other refused.

The planters wanted gang labour under supervision — the old organisation of work, with wages substituted for ownership. The freedpeople refused it, and refused it consistently across the whole region, because it was the thing itself: the overseer, the driver, the field worked in line under a white man's eye. What they wanted was land. Failing land, they wanted the next best thing, which was to work a piece of ground as a household, out of sight, with their own hours and their own division of labour, and above all with their wives and children out of the field gang.

Sharecropping was where the two positions came to rest. The planter kept his land undivided and got a crop; the cropper got a plot, a cabin, and a household's autonomy over its own labour. The land was parcelled, the quarters broke up into scattered cabins, and the visual landscape of the plantation changed so completely that observers assumed the old order had ended.

What the arrangement actually did was substitute a different instrument of control for the one that had been abolished, and the instrument was debt.

The advance, and the medium it came in

A farmer with no capital cannot plant. Between the spring and the settlement he and his family must eat, and he must have seed, fertiliser, tools and usually the use of a mule. In the postbellum South that gap was filled by the furnishing merchant — very often the landlord himself — who advanced supplies against a legal claim on a crop not yet grown.

The operative fact, and the one that decides the whole arrangement, is that the advance was not made in money. In Mississippi the liens averaged roughly eighty dollars a year, varying with acreage, family size, mules and the farmer's reputation. The loans did not take the form of cash. They took the form of goods, supplied from the merchant's own store, at prices the merchant set.

That single design choice performs the function of an interest rate while escaping every legal constraint on one. A usury statute caps what a lender may charge for the use of money. It says nothing whatever about what a storekeeper may charge for bacon. The differential between the merchant's cash price and his credit price — commonly a markup of twenty to fifty per cent, and in many accounts a great deal more, with effective annual rates put by various authorities at fifty to seventy per cent — was interest by another name, recorded as a price, subject to no ceiling, and appearing in no ledger as a charge for the use of money.

Then compound it with the settlement. Accounts were reckoned once a year, after harvest, by the man with an interest in the outcome, in a book the other party could not audit — four in five of the freedpeople could not read in the first generation. A cropper who came out ahead could leave. A cropper who came out behind could not, because the debt followed him, and the enticement statute made it a criminal matter for a neighbouring planter to hire him while it stood.

This is worth stating as a general proposition, because it recurs wherever an extraction runs through credit rather than through tax. The operative clause is not the rate. It is the medium of the advance. A tax payable only in a currency the household does not hold is a labour draft. An advance made only in goods the merchant prices is a rate of interest no statute governs. Both work by controlling what the obligation may be discharged in, and both are invisible to anyone reading the law rather than the transaction.

One dies, get another

Alongside the crop lien ran a second arrangement, and it is where the American South produced something worse than what it had abolished.

Convict leasing put men convicted in state and county courts into the hands of private operators — mines, turpentine camps, sawmills, brickyards, railroads, plantations — who paid the state a fee per man per year and worked them. A southern man explained the economics of it to the National Conference of Charities and Correction in 1883, in public, without embarrassment: *Before the war, we owned the negroes. If a man had a good negro, he could afford to take care of him: if he was sick get a doctor... But these convicts: we don't own 'em. One dies, get another.*

That is the extractor's ledger stated by the extractor, and it identifies the variable precisely.

Under slavery the extractor held a capital asset. A dead field hand was a destroyed investment, which is why the subsistence floor under slavery — terrible as it was — existed at all. It was defended by self-interest and not by mercy. Under the lease the extractor held a *rental*. He paid a fee, in some contracts as little as nine dollars a month, and bore no residual interest in the man whatever. The state supplied replacements.

The mortality figures follow, and must be given as ranges with their sources, because they differ by state, year and category. Richard White gives Mississippi averaging eleven per cent annually between 1880 and 1885, Arkansas about the same in the mid-1880s, Louisiana fourteen per cent in 1881, Mississippi sixteen per cent in 1887. Broader accounts put southern annual convict death rates between sixteen and twenty-five per cent, with a quarter of all Black leased convicts recorded as dying in 1873, and some Alabama mine operations in the 1880s exceeding thirty per cent. The Encyclopedia of Alabama gives four to five per cent for Alabama *state* prisoners and notes that county prisoners, unregulated by the state, fared much worse, with the sick and dying often sent home — which removes them from the state's mortality column while they die. Comparative work puts leased convicts' death rates at roughly ten times those of prisoners in states without the lease.

The uncomfortable conclusion should be stated rather than avoided, and it was stated at the time by the man quoted above. For the men the criminal law captured, the abolition of property in persons removed the only economic restraint that had ever existed. Where an extractor holds a title, the subject's death is charged to his own account. Where he holds a rental, it is charged to nobody, and there is no floor at all — not a lower one, none.

The fiscal side explains why it lasted. Figures for Alabama's revenue from leasing are given at about ten per cent of state revenue in 1883 in several accounts and at nearly seventy-three per cent in 1898 in several others; those cannot both describe the same quantity, and the higher figure probably refers to a particular fund. I record the discrepancy rather than resolving it. What is not in doubt is the direction: by 1886 the United States commissioner of labor reported that where leasing was practised, average revenues were nearly four times the cost of running prisons. A penal system that pays is a penal system that expands, and the arrest rates for the vagrancy and petty-theft offences that fed it moved with the demand for labour.

The statute of 1351

Now the door, and what was done about it — because the response to exit is the clearest evidence in the whole study of what the labour was worth.

Two instruments were used. The emigrant agent law required labour recruiters working for out-of-state employers to buy licences at prohibitive rates, county by county, sometimes with bonds guaranteeing the return of anyone they recruited. The purpose was not concealed: to put out of business the agents who carried news of northern wages into southern counties. The enticement statute made it a criminal offence to hire, or to persuade to leave, a labourer already under contract to another man.

The genealogy of the second is the most striking fact in this part, and it goes to the argument of Part One.

Anti-enticement law is a legacy of the English Statute of Labourers of 1351, legislated in the aftermath of the Black Death, when a third of the population had died, labour had become scarce, wages had risen, and the English lords moved to shut the door. It fixed wages at pre-plague levels, compelled the able-bodied to work for whoever demanded them, and penalised anyone who took a labourer already in another's service. It survived into the common law of master and servant, crossed the Atlantic with everything else in the English legal inheritance, and by the 1850s had subsided in the American states into a minor tort.

After the Civil War every southern state except Tennessee re-elevated breach of it to a criminal offence, with Mississippi's schedule running from fifty dollars to fifteen hundred and up to six months' imprisonment. And the pattern is not American: every former British colony responded to the abolition of slavery with an increase in master-and-servant legislation and prosecution.

The same instrument, addressed to the same dial, in the same legal tradition, five hundred and fifteen years apart — reached for in 1351 when plague made labour scarce, and reached for again in 1866 when emancipation did.

The men in the Mississippi legislature were not consciously reviving a medieval statute. They were in a position that had one obvious solution, and their legal inheritance had the solution already drafted. That is what it means to say these were Englishmen: not a sentiment about identity, but that when they reached into the toolbox, the tool their great-great-grandfathers' law had put there was the one that came to hand.

Why the door would not close

And it did not work. The natural experiment is unusually clean, because the two states diverged for reasons unconnected to migration: Alabama's courts prevented the state from reintroducing its emigrant agent laws between 1882 and 1903, while Georgia's remained in force throughout. Comparing gross out-migration from the two, the econometric work finds that the emigrant agent laws had no direct effect on migration.

The reason they failed is worth stating because it generalises. The most effective recruiters were never the licensable agents. They were Black men and women who had already gone north and came back to visit family, and no licence regime reaches a cousin at a kitchen table. But underneath that is a structural fact: the exit here did not lead to a frontier or to a neighbouring district of the same order, where the extracting state kept some purchase. It led to a rival economy with its own demand for the same labour, whose employers would pay the fare.

Where the receiving end pays for the door, the sending state cannot close it by statute, and its statutes measure its anxiety rather than its reach. The Exodus to Kansas in 1879 moved

tens of thousands. The Great Migration from 1916 moved millions, and it moved them when northern industry, cut off from European immigration by a war, began actively recruiting — which is to say, the door opened when the other side of it started paying.

The fork, stated

Set this part beside the next one and the shape of the whole American arrangement becomes visible in a single comparison.

In the South, one government wanted the labour. Its instruments were vagrancy statutes, annual written contracts, apprenticeship of children, criminal enticement, emigrant agent licences, the crop lien and the convict lease. Every one of them is designed to hold a population in place and working. The land was not the object; the South already held the land and had more of it than it could work.

In the West, the same government, in the same decades, wanted the ground. Its instruments were treaty, removal, reservation, military campaign and finally allotment. Every one of them is designed to move a population off, or to reduce the ground it holds. The labour was not the object; nobody drafted a statute to keep a Lakota man from leaving his employer.

Same state. Same Congress. Same army. Same decade. Opposite instruments, because the object was opposite.

That is not an analogy and it is not a coincidence. It is one government running two conquests at once with entirely consistent logic in both, and Part Seven is about the second one — and about the officers who worked both.



PART SEVEN

THE SAME ARMY

Where the men went

The army that had been demobilised out of the South did not vanish. What remained was a small professional force, and where it was sent is the plainest demonstration available that what changes between conquests is the object, not the instrument.

It went west. A large part of the 1868 army was assigned to operations against Native nations and to garrisoning the borders and coasts, and the officer lists show the same names moving between assignments without interruption. Sherman, Sheridan, Custer, Crook, Miles, Terry — all carry both campaigns on the same record of service. In many cases the transfer was immediate: a colonel who had spent 1866 in Louisiana spent 1868 in Kansas.

But the clearest evidence is a single career, and it is the one this study has already been following.

Oliver Otis Howard was Commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands from May 1865 to July 1874. On 19 October 1865, having first conferred in Charleston with the ex-Confederates intent on regaining their property, he went to Edisto Island to tell the freedpeople settled there under Sherman's order that the President had directed the land restored to its former owners, and to endeavour to effect an arrangement mutually satisfactory to the freedmen and the landowners. His brother recorded that he dreaded the errand like death.

In July 1874 Howard took command of the Department of the Columbia. In 1877 he ordered the non-treaty Nez Percé bands onto the Fort Lapwai reservation within thirty days, and jailed Toohoolhoolzote for speaking against the order. A biographer records that he understood himself to be executing an unjust decision, much as he had at Edisto a decade earlier.

One officer, one uniform, one government: the ground taken back from the freedpeople in 1865, and the ground taken from the Nez Percé in 1877. He was not a hypocrite and he was not unusual. He was a competent man executing his government's policy in two theatres where the policy pointed in opposite directions, and it pointed in opposite directions because the two conquests wanted different things.

What the western instruments were for

Set the western statutes beside the southern ones from Part Six and the contrast does not need commentary.

Removal and reservation. The treaty system, formally ended by Congress in 1871, had already produced a map of reduced holdings; after 1871 the same reductions were achieved by statute and executive order without the formality of a treaty at all. The object of every one of these instruments was to reduce the ground a nation held and to concentrate the people onto a fraction of it.

Military campaign. The Plains wars from the mid-1860s to 1890 were fought to enforce that concentration, and they were fought with the explicit understanding that destroying the buffalo destroyed the independent economy the concentration was meant to end. Sheridan's reported remarks in favour of the hide hunters as the men doing more to settle the question than the army had done in thirty years may be apocryphal in their exact wording, and I have not traced them to a document; the policy they describe is not in doubt.

Allotment. The General Allotment Act of 8 February 1887 — the Dawes Act — is the instrument that completes the operation and is worth reading closely, because it does with land exactly what the southern Black Codes did with labour: it takes the thing the conqueror wants and dresses the taking as an improvement in the condition of the people it is taken from.

The Act authorised the President to survey reservations and allot land in severalty — 160 acres to a head of family, lesser amounts to others — with title held in trust by the United States for twenty-five years, after which a fee patent would issue and citizenship with it. The allottee became a citizen and a property owner, which is how it was defended. And then the operative clause: the surplus land remaining on the reservation after allotment might be purchased by the United States and opened to settlement.

That word *surplus* is doing the whole work. The Act does not declare the reservations empty. It measures what the inhabitants are held to need, assigns them that, and defines everything above the measure as available. Between 1887 and 1934 the land held by Native nations fell from something on the order of 138 million acres to about 48 million — roughly two-thirds gone — and the great majority of that loss was surplus land opened to settlement or allotted land alienated after the trust period ended.

This is a more sophisticated instrument than a declaration of vacancy, and much harder to argue with, because it concedes the inhabitants' title, quantifies their requirement, and takes only the difference. It is also, in its structure, the same instrument Spain used in the Andes in 1591 and Britain used in Kenya — an old, well-tried device arriving in a new place.

The two conquests, side by side

Now state the comparison plainly, because it is the central structural finding of this study and everything else in it is downstream.

Between roughly 1865 and 1890 one government ran two conquests simultaneously.

In the South it wanted the labour of a population it already had, on land it already held. Its instruments, and its subordinate governments' instruments, were: annual written labour contracts; vagrancy statutes triggering on a named day; apprenticeship of children; criminal enticement; emigrant agent licensing; the crop lien; the convict lease. Every one of them holds a population in place and working. The characteristic legal act is a statute preventing a man from leaving.

In the West it wanted the ground, and had no use whatever for the labour of the people on it. Its instruments were: treaty, removal, reservation, military campaign, the destruction of the buffalo economy, and allotment with sale of the surplus. Every one of them removes a population from ground, or reduces the ground it holds. The characteristic legal act is a statute moving people off.

Same state, same Congress, same decade, and in several cases the same officers physically rotating between the theatres. Nearly every variable that usually confounds a comparison between two conquests is held constant here. What differs is what the conqueror came for, and the whole apparatus differs accordingly.

Two further consequences follow from the same fork and are worth naming, because they explain outcomes that are usually attributed to something else.

Demography. A conquest that wants labour has a direct material interest in the survival and reproduction of the people it is extracting from. A conquest that wants ground has no such interest, and where the population is an obstacle rather than an asset, nothing in the extractor's ledger is charged for its decline. The demographic trajectories of the two populations across the same half-century diverge accordingly, and the divergence is not explained by the relative brutality of the men involved. Several of them were the same men.

And the exit dial. In the South the state legislated frantically to prevent movement. In the West it legislated to compel it. The same government, in the same years, criminalised a Black man's departure from a Mississippi county and forced a Lakota family's departure from the Powder River country. Whether a door is bolted or forced open is not a fact about how harsh an order is. It is a fact about which side of the door the extractor wants you standing on.

The Export, and why the elite did not fracture

There is a second thing the West did for the victorious coalition, and it explains why that coalition held together for thirty years after the war despite having every ingredient of a fracture.

A victorious army demobilises a million men. A war economy converts to peace. A political party that has just won total power finds itself with far more claimants on office and advantage than it can seat. That is the classic recipe for a governing elite turning on itself, and it did not happen.

It did not happen because the West was open and paying out. The Homestead Act put land within reach of settlers; the Pacific Railway Act and its successors put up capital, land grants and contracts; the land-grant colleges seeded a professional class; the mineral country, the cattle country and the railroad towns absorbed men and ambition at a rate no domestic quarrel could compete with. The surplus of claimants was discharged outward, continuously, for a generation.

That is why the northern interest could afford to stop caring about the South. It was not that its appetite for governing had diminished. It was that the same dollar, the same year, bought a better return on the Plains than in Louisiana, with no garrison and no annual controversy — and a coalition with somewhere else to spend its energy will spend it there.

Which brings the study to the year in which every one of these lines converges, and to a meeting in a hotel.



PART EIGHT

EIGHTEEN SEVENTY-SEVEN

The tie

The presidential election of 7 November 1876 produced a result the constitutional machinery could not resolve. Samuel Tilden, the Democrat, led the popular vote and stood at 184 electoral votes, one short of a majority. Twenty votes were disputed — Florida, Louisiana, South Carolina and one Oregon elector — with rival returns submitted from each of the three southern states, each state having a Republican returning board and a Democratic claim that the board had thrown out valid ballots, and each having had an election conducted in conditions that make the phrase *valid ballot* difficult to apply in either direction.

Congress created an Electoral Commission of fifteen — five senators, five representatives, five justices — to decide. It divided eight to seven on every disputed elector, and awarded all twenty to Rutherford B. Hayes, who thereby won with 185. Democratic members of the House prepared to filibuster the count past inauguration day.

What resolved it was a set of negotiations, of which the best-known session took place at Wormley's Hotel in Washington on 26 February 1877. Southern Democrats undertook not to obstruct the count. In return: federal recognition of the Democratic claimants in Louisiana and South Carolina, a southerner in the cabinet, and federal support for southern internal improvements, above all a southern transcontinental railroad. Hayes was inaugurated. In April 1877 the remaining federal troops were withdrawn from the statehouses at Columbia and New Orleans, the Republican governments there collapsed within days, and Reconstruction ended.

Two cautions about that account, because it has been told too neatly for a century.

The bargain was smaller than the legend and it did not deliver most of what was promised: the Texas and Pacific Railroad was never built on the terms discussed, and the historiography has spent fifty years arguing over how much of the deal was real and how much was constructed afterwards by participants with reasons to describe it as a settlement rather than a surrender.

And the withdrawal was smaller than the legend too, because — as Part Five established — the floor had been withdrawn in 1865 and 1866. What was left to remove in 1877 was a few hundred men standing outside two statehouses. Reconstruction did not end because troops left. Troops left because Reconstruction had already ended everywhere except in those two buildings, and the men in them were the last two governments it had.

What actually repriced the holding

The useful question is not what was traded at Wormley's but why the trade was available at all — and the answer is that both sides of the northern ledger had reversed over the preceding decade.

On the benefit side. The Republican coalition had needed southern electoral votes and southern Republican officeholders in 1868 and 1872, and by 1876 the arithmetic had moved north and west. It had needed the freedpeople's votes as a lever against a restored Democratic South augmented by the whole-number count — and, as the next part shows, it was about to lose that lever without losing the seats. And the West offered the same coalition a return on the same dollar with no garrison and no annual controversy.

On the cost side. The depression from 1873 made every federal dollar contested. The enforcement prosecutions had become difficult after the Supreme Court's decisions of 1873 and effectively impossible after those of March 1876. And each autumn produced another round of killings requiring another presidential decision about whether to send men.

That last item is the one that does most of the work, and Grant himself named it. Declining Governor Ames's request for federal troops in Mississippi in 1875, he wrote that the whole public were tired out with these annual autumnal outbreaks in the South, and that the great majority were ready now to condemn any interference on the part of the government.

An annual recurring obligation with no end state is the most expensive thing a metropole can carry, and it is the first thing an electorate stops paying for. Not because the facts have changed, and not because anyone has been deceived. Because a cost that arrives every single year, indefinitely, against a benefit that has drifted elsewhere, eventually loses on the ledger — and the moment it does, the withdrawal is described as a settlement rather than as an abandonment, by people who need it described that way.

Mississippi, 1875: the method that worked

The technique that broke Reconstruction is worth setting out, because it was published, copied, and named by its own practitioners.

The Mississippi Plan of 1875 dispensed with the hoods and the night rides that had provoked federal intervention in 1871, and substituted open, daylight, semi-official force: armed rifle clubs parading through Black districts; Democratic clubs demanding to address Republican meetings; economic pressure through the merchants and the landlords; and, where necessary, killings at Clinton and Yazoo City, done in the open, by identifiable men, who were not prosecuted.

The plan's logic was that a state government which requested federal troops would be seen to have lost control, and that the federal government would decline. Governor Ames requested them. The federal government declined. The Democrats carried the election, and the following year the legislature impeached and removed the officials the election had not.

South Carolina copied it in 1876 with the Red Shirts, and Wade Hampton's campaign combined the same elements. It worked in both places. And the reason it worked is contained in Grant's sentence: the method was designed against a metropole that was tired, and it correctly identified tiredness as the operative variable.

The third repointing

And in the same year the apparatus was pointed a third way.

Federal troops were withdrawn from their remaining posts in the South in April 1877. On 16 July the Baltimore and Ohio Railroad cut wages for the third time in a year, and the strike began at Camden Junction and Martinsburg. It spread within days to Baltimore, Pittsburgh, Chicago and St Louis. Governor Mathews of West Virginia found his militia unable or unwilling to act — some of the militiamen were railroad men themselves — and asked for federal troops. Kentucky and Pennsylvania followed. Hayes complied, acting under the constitutional provision respecting domestic insurrection, and the War Department committed about 2,100 regulars while eleven states called out some 45,000 guardsmen. Somewhere between seventy and a hundred people were killed before it ended.

It was the first deployment of the United States Army against a strike. And the troops were available precisely because Reconstruction had ended; contemporary and reference accounts record that those sent included men who had been stationed in the South.

Set the three deployments in a line and the argument of this study is visible in one sequence.

1865–66: the army in the South, its most consequential act the restoration of land to pardoned rebels, performed by the Commissioner of the Freedmen's Bureau in person.

1867–77: the army in the West, in campaigns that removed Native nations from ground the Homestead Act and the Pacific Railway Act were converting to settlement — with the same officers, one of whom had performed the Edisto errand.

July 1877: the army in Pittsburgh and Baltimore and Chicago, against the men working the railroad that the second deployment had made possible, employed by the companies the wartime Congress had chartered.

One instrument, three objects, twelve years, several of the same men. Nothing about the army changed. What changed each time was whose position required force and against whom — and each time, the answer was determined by where the governing coalition's interest had moved.

Labour, and what it discovered

One further thing about 1877, because it is the point at which the northern arrangement's own settlement became visible to the men underneath it.

The wartime and postwar programme — the tariff, the railroad charters, the land grants, the national banking system — had built an industrial economy at extraordinary speed, and it had built a working class along with it, in the mill towns, the coalfields and the rail yards. The depression from 1873 cut wages repeatedly, and by 1877 railroad workers had absorbed three cuts in a year while the roads continued paying dividends.

What they discovered in July was that the federal government which had spent a decade arguing about the rights of labour in the South would deploy regulars against labour in the North within ninety days of leaving. It is not necessary to allege any hypocrisy: the two acts are entirely consistent from the position of the men making them. A coalition whose capital was now in railroads, mills and mines had exactly the same interest in an orderly labour force in Pennsylvania that a Mississippi planter had in Mississippi — and reached, as the Mississippi planter had, for the instrument nearest to hand.

The difference was that in the North the instrument was not the enticement statute but the militia and the regular army, and that the men it was used against were white and could vote, which meant the arrangement had to answer them politically over the following forty years in a way the South did not have to answer the freedpeople at all.

That difference is the subject of Part Nine, and it turns on a single clause of the Fourteenth Amendment that nobody ever enforced.



PART NINE

THE WORDS LEFT STANDING

The arithmetic that organises everything

Return to the treaty of 1787 and to the clause that counted held people at three-fifths.

That fraction had been a compromise between a northern position that held people should not be counted at all, since they could not vote, and a southern position that wanted them counted in full. It gave the slave states a standing bonus in the House and the Electoral College — weight derived from people who had no part in exercising it.

Emancipation deleted the fraction. From the census of 1870 onward, four million people formerly counted at three-fifths were counted whole.

The South's representation therefore went up as a direct consequence of losing the war — and the people whose numbers produced the increase could be, and shortly were, prevented from voting. The bonus was not abolished by emancipation. It was enlarged by it.

This is the single most important structural fact in the American settlement after 1865, and it is very rarely stated as an arithmetic problem, which is what it is. Every subsequent element of the story — the Fourteenth Amendment's second section, the enforcement statutes, the abandonment, the disfranchising conventions, the seventy-year congressional dominance of the southern delegations — runs off it.

The penalty that was never levied

THE Republicans who wrote the Fourteenth Amendment saw the problem precisely and legislated for it. They did not have the votes in 1866 for the obvious remedy — a prohibition on racial denial of the franchise, which would come in 1870 — because only a few northern states then permitted Black men to vote, and referenda in several northern states had revealed substantial white hostility to the proposal.

So they built a penalty instead. Section 2 provides that representatives shall be apportioned counting the whole number of persons in each state, excluding Indians not taxed — *but when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.*

As an instrument it is clean. Exclude a tenth of your electorate and lose a tenth of your seats. No state would risk it. The arithmetic enforces itself.

It has never once been applied.

An attempt was made to gather the necessary data in the census of 1870, and it became clear almost immediately that reliable information about denials and abridgements could not be collected. No subsequent census attempted it. No serious effort was ever made in Congress to give the section effect, and the one judicial attempt was rebuffed. When one of the ten demands of the March on Washington in 1963 was the enforcement of the Fourteenth Amendment by reducing the congressional representation of states where citizens were disfranchised, Congress took no action.

There is a smaller episode that shows the chamber policing the arithmetic when it suited. On readmission, several southern states claimed that emancipation entitled them to larger delegations, and South Carolina elected two additional at-large members in 1870. The House refused to seat them. So it was willing to police the *increase* when it arrived as an irregular claim, and unwilling to police the *exclusion* that made the regular increase indefensible.

A penalty that requires the penalised to supply the evidence, and requires a chamber containing the penalised to impose it, is not a safeguard. It is a statement of principle drafted with an enforcement mechanism specified in a way that guarantees it will never run.

And there is a general point here about how liberties are won, which the whole of this study supports. The Reconstruction amendments were not conceded to the freedpeople because anyone in Washington had undergone a change of heart about them. They were written by a party that needed southern Republican votes against a restored Democratic South whose representation had just increased, in a war with a rival faction, and they went as far as that faction's interest required and no further. That is where they came from, and it is why the enforcement clause was drafted to be unusable at exactly the point where enforcing it would have cost the drafters something.

Rights in this arrangement were residue from fights between factions of the hierarchy. They were real, and they were durable enough to be picked up eighty years later by people the drafters had not imagined — which is the most important thing about residue, and the reason it matters that words get written down even when they are not enforced. But they were not a gift, and they were not a discovery, and nobody at the bottom of the arrangement was in a position to have obtained them.

The courts, hollowing

The words stayed on the page. What was removed was everything that would have made them operate, and it was removed in a series of decisions.

The Slaughter-House Cases (1873) read the privileges or immunities clause so narrowly that it protected only a short list of rights of national citizenship, leaving the great body of civil rights where they had been before — with the states.

United States v. Cruikshank (1876) arose from the Colfax massacre. The Court held that the Fourteenth Amendment reached state action and not the acts of private individuals, and that the federal indictments therefore failed. The practical effect was that a mass killing by a private mob was a matter for the state whose officials had declined to prosecute it.

United States v. Reese (1876) struck down sections of the Enforcement Act as exceeding the Fifteenth Amendment's scope.

The Civil Rights Cases (1883) voided the public accommodations provisions of the Civil Rights Act of 1875 on the same state-action reasoning.

Plessy v. Ferguson (1896) upheld separate accommodation, with Harlan alone dissenting.

Williams v. Mississippi (1898) upheld a disfranchising scheme on the ground that the provisions did not on their face discriminate by race, notwithstanding the convention's own recorded purpose.

Giles v. Harris (1903) closed the door. Holmes, for the Court, declined relief on the reasoning that if the whole registration scheme was a fraud, a court order adding the plaintiff to a fraudulent roll would give him nothing; and that relief against a wrong of this magnitude, dependent on the political department, was beyond the practical reach of judicial power.

Read as a sequence it is a coherent doctrine being built, and its effect is precise: the federal guarantees remained, and the federal capacity to enforce them against private violence and against facially neutral state schemes was removed. Nobody repealed anything. The text of the Fourteenth and Fifteenth Amendments in 1905 was word for word the text of 1868 and 1870.

Written down at last

Between 1890 and 1908 the southern states wrote the settlement into their constitutions, and — this is what makes the archive so valuable — they explained in convention, on the record, exactly what they were doing.

Mississippi went first in 1890, with a combination of a poll tax, a residence requirement, a list of disqualifying petty offences chosen for the pattern of prosecutions, and an understanding clause requiring the applicant to read a section of the constitution or to interpret it when read to him, administered by a white registrar with unreviewable discretion. South Carolina followed in 1895, Louisiana in 1898 with the original grandfather clause, North Carolina in 1900, Alabama in 1901, Virginia in 1902, Georgia in 1908.

Alabama's convention opened at Montgomery in May 1901 and its president, John B. Knox of Anniston, told the delegates what the convention was for. *And what is it that we want to do? Why it is within the limits imposed by the Federal Constitution, to establish white supremacy in this State.* And, later in the same address: *But if we would have white supremacy, we must establish it by law — not by force or fraud.*

Both halves of that deserve attention.

The first half is a statement of purpose so direct that no interpretation is required, made by the presiding officer, in a document printed by the state.

The second half is the more interesting one structurally, because it is a man describing a *constraint* and proposing to work within it. Force and fraud had held the position for twenty-five years and had been costly, embarrassing, occasionally federally actionable, and dependent on organising men every autumn. Law would hold it permanently, cheaply, and — as *Williams v. Mississippi* had confirmed three years earlier — with the federal courts' acquiescence, provided the statute did not say on its face what the convention had said out loud.

That is a legitimating story being fitted to a constraint by the man cutting it, and it is the clearest instance of the operation this study has found anywhere. The constraint was real: the Fifteenth Amendment could not be defied openly. So the instrument was drafted to achieve the forbidden result by means the Amendment's words did not reach — poll taxes, literacy tests, understanding clauses, and criminal disqualifications keyed to offences the local courts controlled.

The results were what the conventions intended. Louisiana had over 130,000 Black voters registered in 1896 and 1,342 in 1904. Mississippi, Alabama and Virginia produced comparable collapses. And they held for sixty years.

The seat that was closed to white men too

One thing about those conventions is fatal to reading this settlement in two columns, and it was predicted at the time by people who were not believed.

In the North Carolina campaign of 1898 the Populists warned publicly that if the Democrats carried disfranchisement, the same laws would take the vote from poor whites. They were correct. Mississippi's registration of 1892 disfranchised the great majority of the state's Black voters and about fifty-two thousand white ones. The poll tax fell on any man without cash; the literacy test fell on any man who could not read; the residence requirements fell on tenants who moved.

The grandfather clauses were the concession offered to hold the poorest white voters inside — Alabama's temporary plan included a provision registering the descendants of soldiers, aimed at reconciling the white counties of the north of the state — and they were

temporary by design, expiring after a registration window.

This matters for two reasons.

The first is that it disposes of the account in which disfranchisement was simply a racial measure. It was a racial measure *and* a class measure, and the men who wrote it said so: several conventions were explicit that they were removing the ignorant and purchasable vote of both races, and their delegates from the plantation counties had wanted for a generation to be rid of the upcountry white electorate that had produced Populism.

The second is what it says about the arrangement's own weakest link. Part Six described a settlement that was destroying the position of the white tenant farmer along with the Black one — the crop lien did not check a man's race before compounding. By the 1890s that failing link had produced the most dangerous political movement the southern order faced after 1865: a Populist insurgency that in several states allied poor white farmers with Black voters and came close to breaking the Democratic monopoly.

The order's answer was not to repair the yeoman's position. It was to remove his capacity to act on the failure, by contracting the electorate. That is a settlement solving its weakest point by shrinking the number of people who can complain rather than by widening the distribution — and it is the reason the Populist rupture, which came nearer to breaking this order than anything between 1865 and the 1950s, left almost nothing behind.

What was left

By 1908 the position was as follows. The Thirteenth, Fourteenth and Fifteenth Amendments stood in the Constitution, unamended and unrepealed. Black Americans were citizens in law. In the states where nine-tenths of them lived they could not vote, could not sit on juries, could not use the same railway carriages, schools, courts or hospitals, worked land they did not own under liens they could not audit, and were liable to a criminal justice system that supplied labour to private industry. And the states in which all this was true held congressional and electoral weight inflated by counting whole the population they had excluded, which their delegations used, for the following half-century, to block any federal measure that might have altered it — including, repeatedly, a law against lynching.

The words were left standing and the machinery beneath them was removed. That is not a failure of a settlement. It is a settlement — and it was drafted, argued and voted on in public by men who explained what they were doing while they did it.



PART TEN

THE ACCOUNTING

Who wrote the numbers

Before any figure, a note about where figures come from, because in this case it decides how much weight each can carry.

The war dead were counted by the survivors of one side from the surviving records of both. The lynching totals were compiled by a newspaper, a Black activist working from that newspaper's own tallies, a Black university, and later an advocacy organisation, each using a different definition and a different date range. The convict mortality figures came from the states that ran the leases and had a direct interest in the numbers. The economic condition of tenant farmers was recorded in ledgers kept by the men on the other side of the transaction, most of which have not survived and none of which were audited.

The powerful in this case left paper and the powerless left silence, with one very large exception — the eight thousand pages of sworn testimony Congress took in 1871, which exists precisely because for seven months one faction of the hierarchy had an interest in hearing it. That exception is the most valuable thing in the archive, and its existence for those seven months and not before or after is itself a measurement.

The founding cost

The traditional figure for the war's dead is about 620,000 — in its precise form 618,222, being 360,222 Union and roughly 258,000 Confederate — assembled in the late nineteenth century by veterans, principally William F. Fox and Thomas Livermore, from surviving documents.

In 2011 J. David Hacker published a census-based recount. His method was demographic rather than documentary: he took the ratio of male to female survival among the native-born white population aged ten to forty-four across 1850–60 and 1870–80, established the normal pattern, measured the deficit in the war decade against it, adjusted for census undercount, and added existing estimates for foreign-born and Black soldiers. His result was a range of 650,000 to 850,000 with a central figure of 750,000 — twenty per cent above the traditional count.

The dispute belongs on the page. The American Battlefield Trust declined to adopt the revision, on the grounds that the range is very broad, includes civilian deaths, and is not tied strictly to the war years. Hacker's answer is that the 620,000 figure carries a large error range too, and that its only advantage is that its range has never been published. McPherson found the revision plausible and supplied a mechanism: most of the difference is probably

underreported Confederate deaths, and he had always regarded 258,000 as too low.

This study asserts neither number. The shape of the disagreement is the finding — a documentary count made by the survivors of one side, against a demographic estimate that locates a larger deficit exactly where the record-keeping was worst. Hacker's own scaling is the most useful way to hold it: the American population in 1860 was about 31 million, so a proportionally equivalent loss today would fall somewhere in the region of six million people.

The standing cost

Lynching. The Tuskegee Institute's records, the *Chicago Tribune's* annual tallies, the NAACP's compilation and the Equal Justice Initiative's more recent count give different totals because they count different things across different years and states. The commonly cited Tuskegee series gives something over 4,700 lynchings between 1882 and 1968, of which roughly 3,400 to 3,500 were of Black victims. EJI's documentation, using a broader definition and extending the search into county records, has raised the count of racial terror lynchings substantially. No single figure should be asserted, and the practice of giving one has done real damage to the credibility of the subject.

What is not contested is the pattern: concentrated in the cotton states, peaking in the 1890s, overwhelmingly unprosecuted, and frequently public — advertised in newspapers, attended by crowds, photographed and reproduced on postcards. A killing conducted before an audience with the local authorities present is not the concealment of a crime. It is an act of government by other means, and the men doing it understood that it required no concealment because it would not be prosecuted.

The convict lease. The mortality ranges are given in Part Six and cannot be reduced to a figure. What can be stated is that the system ran for roughly half a century, that its death rates ran at multiples of those in non-lease states, and that the labour it supplied built railroads, mined coal, cut timber and produced turpentine for companies whose accounts recorded the men as an operating expense.

The foreclosed lives. This is the largest item and the one no instrument registers. Four million people and their descendants held for three generations in a tenancy from which capital accumulation was structurally impossible; a school system funded at a fraction of the white one in states that had written universal education into their constitutions in 1868; a franchise removed; a court system closed as jurors, as witnesses in practice, and often as plaintiffs; and a labour market in which the penalty for seeking a better price was criminal. The cost of that is not a body count and cannot be made into one, which is precisely why an accounting that counts only bodies will systematically understate it.

And the white South's cost, which belongs in the same column. The region was the poorest in the country for eighty years. Its tenant farmers, white and Black, worked the same

liens at the same rates. Its industrial development was retarded, its capital drained north, its schools bad for everyone, its political life reduced to a single party in which the only contest was a primary the arrangement had rigged in advance. The settlement that disfranchised half a million Black voters also disfranchised tens of thousands of white ones and left the rest with no party to vote for. An order built to hold one population down held the men standing on top of it in place as well, and the upcountry farmer who cheered the conventions of 1890 to 1908 was one of the people they impoverished.

The credit column, at full weight

Set against all of that, in the same breath and not as an afterthought.

Slavery was abolished, by constitutional amendment, in a country where it had been the largest single form of capital. That is not a small thing and it did not have to happen.

Three amendments were written that made citizenship national, guaranteed due process and equal protection against the states, and prohibited racial denial of the franchise. They were unenforceable for two generations and they were not repealed, and in the twentieth century they were the instrument that dismantled the settlement this study has described. Words left standing turned out to matter enormously, which is the strongest single argument available for writing things down even when they cannot be enforced.

The Reconstruction state constitutions of 1868 established the South's first public school systems for either race, abolished property qualifications for office, reformed penal codes and expanded married women's property rights, and several of those provisions outlasted everything else.

Something over fifteen hundred Black men held public office in the South between 1867 and 1877 — sheriffs, legislators, congressmen, two United States senators — in a region where, ten years earlier, the same men had been property. What that record demonstrates is what appeared the moment the suppression lifted even slightly, and it is the most complete refutation available of everything the disfranchising conventions said about capacity.

And the freedpeople's own achievement, which was not given to them by anybody: within a generation of emancipation, a population that had been forbidden to read had built churches, schools, colleges, newspapers, mutual aid societies, fraternal orders and a professional class, out of nothing, under the conditions described in Parts Six and Nine.

The formation, and why none of this is common knowledge

Now the part of the accounting that has no line in any ledger, and that the framework treats as one of the three legs of any order: what the arrangement did to the country's understanding of itself.

By the 1890s the account of the war and its aftermath that prevailed nationally was this. A tragic conflict between brave men on both sides, fought over constitutional principle and states' rights; a reconciliation of sections; and, in between, a Reconstruction that had been a period of vindictive misrule, in which carpetbaggers and ignorant freedmen had misgoverned a prostrate people until the natural leaders of the South restored order.

Every element of that is contradicted by the primary documents. The seceding states published declarations naming slavery as the cause. The Confederate vice-president gave a speech in Montgomery in March 1861 stating that the new government's cornerstone rested upon the great truth that the negro is not equal to the white man and that slavery is his natural condition. The Reconstruction governments built the schools. The restoration of order was conducted by armed organisations that killed people in the open.

The account prevailed anyway, and the mechanism by which it prevailed is the important thing.

The North adopted it. This is what makes this case different from every other in the collection. The defeated party manufactured the story, as defeated parties do; what is unusual is that the victors took it up, taught it in their own schools, endorsed it in their own periodicals, and gave it scholarly standing at their own universities — Dunning's students at Columbia produced the state-by-state monographs that made it the profession's consensus for fifty years, and it moved from there into the textbooks, and from the textbooks into *The Birth of a Nation* in 1915 and *Gone with the Wind* in 1939.

The reason is legible in the position. A metropole that has decided to stop paying for a commitment needs an account in which the commitment was not owed. The North had abandoned the freedpeople for the reasons set out in Part Eight, and a people that has done that requires either an admission or a story. The defeated party had spent a decade manufacturing exactly the story required and was delighted to supply it.

Notice what each side gave up in the exchange. The South surrendered its own founding statements — the secession declarations, the cornerstone speech, the commissioners' letters of the winter of 1860–61 — and had to treat its own primary documents as embarrassments, which is why those documents have functioned ever since as the most decisive refutation of the story that replaced them. The North surrendered the half of Lincoln's second inaugural about the wealth piled by the bondsman's unrequited toil, and kept the half about malice toward none. Both parties gave up something they had said in public, and both bought the same thing with it: an end to the argument.

The consequence is a formation, and it is the deepest and most durable thing this study has to describe. A country in which an ordinary schooling produces an adult who knows the war was about slavery — the textbooks have largely been corrected on that point — but who has never encountered the proposition that there is a hierarchy in his own country at all; who has not been taught that the Constitution was a treaty among established interests; who does

not know that his rights arrived as residue from fights between factions with means; and who has been given, instead, an account in which liberties expand over time through the moral development of a people.

That is what a successful robe looks like from the inside. Not a lie anybody tells, and not a thing maintained by a censor — the documents are all in print, most of them free, and this study has been built entirely out of them. It is a settled frame, installed early, in which certain questions do not arise. And the test of it is not whether it can be refuted, since it can be, in an afternoon, from primary sources. The test is that almost nobody looks — which is the ordinary condition of a belief that has become the furniture of a room rather than an argument in it.

The strongest counter-position

Stated in its own voice, as its serious defenders would put it, and it is a serious position.

Your study has imported a colonial grammar onto a constitutional crisis, and the grammar misdescribes it at four points.

First, the United States was not a viceroyalty. It was a federal republic with a written constitution, an independent judiciary, and no settled doctrine of national power over the internal affairs of states that had never legally ceased to exist. Slaughter-House and Cruikshank were not betrayals; they were defensible readings of a structure nobody had repealed, and your own account concedes that Slaughter-House arose from a butchers' monopoly and not from a racial question at all. The constitutional limits were real. Treating them as a euphemism for indifference assumes precisely what needs proving.

Second, your method makes everyone a calculator, and therefore cannot account for the attempt. Position logic explains beautifully why Grant thought about the northern electorate in 1875. It cannot explain why three hundred and sixty thousand Union men are in the ground, or why northern schoolteachers went south for no pay and were murdered for it, or why Howard dreaded the Edisto errand like death, or why anyone bothered to write the Fourteenth Amendment. A framework that accounts for the withdrawal in full and the commitment not at all has described the second half of a story and called it the whole.

Third, what you call a floor withdrawn by metropolitan will was a self-governing people voting. Repeatedly, in known elections, the northern electorate chose parties that would stop paying. You describe this in the vocabulary of an apex whose ledger changed, which converts a democratic decision into an administrative one and makes a free people sound like a colonial office.

Fourth, and decisively: the settlement you describe did not last. The Amendments survived, and in the twentieth century they became the instrument that dismantled everything in your Parts Six through Nine. You call Section 2 disabled and the Fifteenth Amendment hollowed.

They were deferred. A study that ends in 1908 has stopped one act early and mistaken an intermission for the ending.

The answer

Take the four in order, conceding what must be conceded, because most of the facts in that statement are correct.

On the constitutional limits. They were real, and *Slaughter-House* did arise from a Louisiana butchers' monopoly. But a limit is a fact about what an actor may lawfully do, not about what he wants, and the test is what the same actors did when a limit was inconvenient in the other direction. The same federal government that could not reach a private mob at Colfax could charter transcontinental railroads, seize and allot the lands of Native nations, station regulars in Pennsylvania against strikers, and remake the currency and the banking system of the country inside four years. A constitutional structure that permits all of that and forbids the protection of citizens from armed political murder is not describing a limit on federal capacity. It is describing a choice about where the capacity would be pointed — and Part Eight names, in the actors' own words, the calculation behind the choice.

On the calculators. This is the strongest of the four and it is substantially right. Position logic explains the withdrawal far better than it explains the commitment, and this study should say so rather than pretend otherwise.

But two things narrow the gap. The first is that the commitment was not made by an undifferentiated North. It was made by a faction — the Radicals — who held a position from which it paid: they needed southern Republican votes, they had a party interest in the freedmen's franchise, and they were fighting a war with a president they eventually impeached. That does not make Stevens or Sumner insincere. It means their sincerity and their position pointed the same way for a decade, which is the ordinary case and is exactly why the framework declines to adjudicate sincerity at all.

The second is that the framework does not deny that people act from conviction. It says that conviction is not what determines outcomes at scale, because the men holding organised force and revenue can act on their positions and the men holding conviction alone cannot. Three hundred and sixty thousand Union dead is a fact about what people will do for a cause. That the cause was abandoned within twelve years by the same electorate is a fact about what determines whether a cause holds, and both facts are in this study.

On the democratic decision. Conceded, and it is the sharpest of the four. The northern electorate did vote, repeatedly and knowingly, for parties that would stop paying.

But the concession runs the other way from the way the objection intends. That a withdrawal was democratic tells you about its procedure and nothing about its substance. The people whose protection was being withdrawn were not in the electorate that voted to

withdraw it — that was the entire point of the disfranchisement, and Section 2 was written by men who understood exactly that and drafted a remedy nobody ever used. An arrangement in which a majority votes about the rights of people it has excluded from voting is not refuted by pointing out that the majority voted. It is described by it.

On the intermission. Also conceded, and it is the most important thing in the counter-position, and this study has already made the point in the credit column: the words stayed on the page and turned out, sixty years later, to be the instrument. Anyone reading this study as a demonstration that writing rights down is futile has misread it.

But the deferral was sixty years, and the framework's business is with what happened during them. A settlement that holds for three generations is not an intermission to the people who lived inside it, and the mechanism by which it was built, held, defended and eventually written into seven state constitutions is the subject of this study whatever came afterwards. That the Fifteenth Amendment was given effect in 1965 is a fact about 1965. It does not convert the sixty preceding years into a pause, and the people who spent their whole lives in them are not retrospectively compensated by a statute their grandchildren obtained.

Four refusals

Four temptations attend a study of this material and each should be refused explicitly.

Refuse the conqueror's syllogism. That the arrangement lasted, that the country prospered, and that the Union was preserved are facts about incentive structures and are not verdicts in the arrangement's favour. Durability is what a settlement buys when it gives everyone with power a stake in it.

Refuse the rigged comparison. Setting the American South against other slave societies, or against other conquests, is a comparison among conquests and not a comparison between conquest and self-rule. And the foreclosed alternative is in the record and should be named: it is what the freedpeople asked for at Savannah in January 1865, in the plainest terms anyone in this study used — land, and to turn it and till it by their own labour.

Refuse credit for parsimony, and note that it inverts here. In a cheap order, mildness is usually a fact about the endowment rather than the conqueror's character. This order was not cheap and not mild, and the inversion is that its genuine protections — the litigation, the Bureau's courts, the amendments, the hearings — existed because a faction of the hierarchy needed them against another faction, not because anyone at the top had decided the freedpeople should have them. That is a description of the mechanism and not a debunking of the protections, which were real and were used.

Refuse cynicism. A built thing that becomes real is not a lie. The Confederate veteran who believed by 1900 that the war had been about constitutional principle was not performing; he had been formed, along with his sons, by an account that had become his

world. The northern schoolchild taught reconciliation was not deceived by anybody in particular. And the freedpeople who put their children into schools and their names onto voter rolls in 1867, in the belief that the promise would hold, were not naive. They were reading a written instrument that said what it said, and they were the party to it who kept their side.



A note on sources. * The primary material in this study is public and, with few exceptions, free: the charters and the Constitution; the secession declarations; the Emancipation Proclamation and Special Field Orders No. 15; the Mississippi session laws of 1865; the Reconstruction amendments and enforcement statutes; the thirteen volumes of the Joint Select Committee's report of 1872; the Supreme Court reports; the state convention proceedings, of which Alabama's are online at the Alabama legislature's own site; the annual messages of Presidents Johnson and Grant; and the writings of Douglass, Wells, Washington and Du Bois. Where this study quotes, it quotes those. Modern scholarship — on the demobilisation figures, the crop lien and the furnishing merchant, the convict lease, the emigrant agent laws and the enticement statute's descent from the Statute of Labourers, the Hacker recount and the argument over it, and the historiography of the Compromise of 1877 — is paraphrased and credited in the text. Contested quantities are given as ranges with their sources named and are not resolved: the war dead, the lynching totals, convict mortality, the Colfax toll, Alabama's convict-lease revenue as a share of the whole, and the extent of the bargain at Wormley's. Where a widely repeated remark could not be traced to a document, it is marked as untraced rather than quoted. Sherman's motives, Howard's, Grant's and Hayes's are read from their acts and their written words and not from their hearts. --- Part of the collection Patterns of Power. *Tested, never revealed.